There's still time to claim the Employee Retention Credit (ERC) that's worth up to $26,000 per eligible employee. Are you confused about what you can and should do? What should you look for when selecting an ERC partner?

Have you discovered that fellow small business owners have begun receiving their ERC checks from the IRS? Have you heard radio ads showcasing firms that assist small business owners in claiming the ERC? Have you received conflicting advice from payroll providers, accounting firms, or your professional networks about whether your business or not-for-profit is eligible?

The Employee Retention Credit (ERC - and sometimes also referred to as the Employee Retention Tax Credit or ERTC) is a significant, unrestricted payroll tax refund from the IRS worth up to $26,000 per eligible employee. The history and establishment of the ERC is complex. A notice published by the IRS encourages employers to take advantage of the ERC as one of several federal COVID-19 economic relief programs for businesses. It was created by the congressional CARES Act, expanded by the Consolidated Appropriations Act and the American Rescue Plan Act, and reduced slightly in the Infrastructure Investment and Jobs Act.

Given these various iterations of the tax law and updates to the ERC guidelines, misconceptions about the ERC are common.

Myth #1

Businesses that received the PPP aren't eligible to receive the ERC.

FALSE. While this was true when the ERC was established, eligibility was later expanded to allow businesses to receive both the ERC and the PPP.

Myth #2

Businesses that didn't qualify for the PPP don't qualify for the ERC.

FALSE. Qualification requirements for the ERC and the PPP are completely different.

Myth #3

Businesses whose sales were up don't qualify for the ERC.

FALSE. A decline in sales is not the only way to qualify for the ERC; many businesses whose sales increased during the pandemic still qualify for the ERC.

As noted in Daniel Mayo's recent article, *Will The IRS Deny Your Claim For The Employee Retention Tax Credit,* that was published as a *Forbes* contributor:

"One unfortunate side effect of the ERC explosion has been the proliferation of tax credit companies offering dubious advice in exchange for outsize fees."

There are a number of firms who tout the savings, but are far from qualified to do the work. When considering a partner to work with in determining your employee retention credit, be mindful of three key areas that should be embedded within this work.

Qualification: Your unique facts and circumstances should be mapped to the ERC guidelines for eligibility and qualification. This should entail both a professional opinion letter and the qualification resources document which outlines the ERC guidelines. This document should be a synthesis of the hundreds of pages of ERC guidelines and written in such a way as to be accessible to the average person. It is worth noting that the qualification step is often skipped by providers, putting businessowners at risk in the event of an audit.

A businessowner met with SRB Capital to determine whether she may have been eligible for more ERC than her payroll provider had instructed her to claim. The payroll provider claimed the ERC on Q3 2021, for which she was not qualified. She was unable to articulate the qualification requirements for the ERC. Furthermore, the payroll provider had undercalculated her ERC by ~80%.

Maximization: Ask whether the provider will calculate the ERC using algorithmic software or manual calculations to analyze your data to calculate the maximum amount of ERC claimable. In a peer-reviewed study by a top 100 CPA firm, an algorithmic software solution recovered an average of 12.9% more ERC across 27 trials as compared to CPA manual calculations. This is largely due to the way the ERC interacts with other relief programs.

Certification: Ensure the deliverables provided by the provider protect you in the event of an ERC audit. Process control certificates should attest to the guidelines adhered to in ERC calculations, and allocation reports should demonstrate exactly how the ERC amount was calculated. With these deliverables considered, you can be confident that your organization can meet the substantiation requirements as set forth by the IRS in the event of an audit.

The ERC is considered a taxable event. For example, if your business claims $100,000 of Employee Retention Credit for Q1 and Q2 of 2021, then it must reduce the employee wage deduction on the 2021 return by $100,000, effectively increasing taxable income by the amount of the credit.

The ERC is so complex that many providers don’t take the time to calculate all of the benefit their clients stand to gain within this program. It is absolutely essential for any company with payroll to have their situation analyzed by a knowledgeable expert. Finding those providers who will partner with you to maximize the credit and furnish you with documentation to support the conclusions is a critical step in the due diligence required to participate in this generous IRS program.

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